**JUDICIAL CONDUCT COMMITTEE**

Ref No: JSC/146/02/2025

In the matter between:

**MR K P L MALAO** **COMPLAINANT**

and

**JUDGE T NDITA** **RESPONDENT**

**Date:** 15 September 2026

**Decision:** a. The complaint is established to the extent that the respondent delayed for more than fourteen months in delivering judgment under case number 16452/23. The delay constituted a grossly negligent breach of Article 10 of the Code of Judicial Conduct and conduct unbecoming of a Judge in terms of section 17(4)(b) of the Judicial Service Commission Act 9 of 1994.

b. In terms of section 17(8)(*b*) of the Act, the respondent is formally reprimanded.

c. In terms of section 17(8)(*a*) of the Act, the respondent is directed to tender a written apology to the complainant within 30 days of receipt of this ruling.

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**RULING**

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## THE JUDICIAL CONDUCT COMMITTEE (MLAMBO DCJ)

### Introduction

[1] Mr Malao lodged a complaint with the Judicial Conduct Committee (the JCC) against Judge T Ndita of the Western Cape Division of the High Court. The complaint arises from an urgent application under case number 16452/23, *KPL Malao and Others v The Road Accident Fund and Others*, in which judgment was delivered electronically on 11 December 2024.

[2] The complaint was considered and directed to be dealt with in terms of section 17 of the Judicial Service Commission Act 9 of 1994 (the Act).[1] The respondent was invited to respond to the allegations on 1 December 2025. After no response was received, a reminder and final extension were sent on 1 April 2026. The information before me is that no response was filed by the respondent. The matter must therefore be determined on the complaint, the documents placed before me, and the judgment in the underlying matter, which was obtained from the Judge President of the Western Cape Division pursuant to section 17(3)(b) of the Act. That provision permits the Chairperson or designated member to obtain, in the manner considered appropriate, any other information considered relevant to the complaint.

[3] Section 17 provides for an inquisitorial process.[2] The question is not whether the judgment in the underlying urgent application was correct. The question is

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[1] Section 17(1) of the Act provides, "[i]f—

(a) the Chairperson is satisfied that, in the event of a valid complaint being established, the appropriate remedial action will be limited to one or more of the steps envisaged in subsection (8); or

(b) a complaint is referred to the Chairperson in terms of section 15 (1) (b) or section 16 (4) (a), or section 18 (4) (a) (ii), the Chairperson or a member of the Committee designated by the Chairperson must inquire into the complaint in order to determine the merits of the complaint."

[2] Section 17(2) provides, "Any inquiry contemplated in this section must be conducted in an inquisitorial manner and there is no onus on any person to prove or to disprove any fact during such investigation."

whether the information obtained establishes judicial misconduct under the Act and the Code of Judicial Conduct (the Code), whether the complaint should be dismissed, whether a remedial step under section 17(8) should be imposed, or whether a recommendation should be made that the complaint be investigated by a Tribunal.

**The Complaint**

[4] The complainant states that he brought an urgent application in the Western Cape High Court in September 2023. The application was brought by him, K Malao Incorporated and claimants listed in the founding papers against the Road Accident Fund and other respondents. The judgment records that the application was opposed only by the Road Accident Fund.

[5] The complainant alleges that the matter was extremely urgent because his firm faced closure if payment was not made by the Road Accident Fund. He states that it was important for him to know the outcome urgently so that, if the application failed, he could take further steps.

[6] The complaint is directed primarily at the delay in delivering judgment. The complainant alleges that, after the matter was heard, weeks and months passed without judgment being delivered and without communication from the Judge. He states that, on 2 November 2024, he wrote to the High Court enquiring about the judgment, which had not yet been delivered. He further states that the judgment was eventually only delivered on 11 December 2024.

[7] The complainant alleges that the delay caused prejudice to him, his firm and his clients. He says that it resulted in delay in justice, harm to his firm's reputation,

finances and operations, and the loss of an opportunity to take further steps timeously. He also alleges that the respondent gave no reason for the delay, save for an email from her secretary stating that the Judge apologised profusely and unreservedly for the inordinate delay.

**The Response**

[8] The respondent was afforded an opportunity to respond to the complaint. The section 17 letter dated 1 December 2025 invited her to respond by 15 December 2025. A reminder dated 1 April 2026 recorded that no submissions had been received and granted a final extension until 14 April 2026. The reminder also stated that, if no submissions were received within the extended period, the matter would be placed before the Committee for consideration and a decision would be taken on the information available on record.

[9] The respondent did not file submissions. There is therefore no explanation from the respondent for the period between the hearing of the urgent application in September 2023 and the delivery of judgment on 11 December 2024.

**Applicable Legal Framework**

[10] Section 12(5) of the Act provides that the Code serves as the prevailing standard of judicial conduct which Judges must adhere to.[3] A complaint against a Judge must still be determined within the grounds set out in section 14(4) of the Act.[4]

[3] Section 12(5) of the Act provides, "[t]he Code shall serve as the prevailing standard of judicial conduct, which judges must adhere to, and the Code and every subsequent amendment must be published in the *Gazette*."
[4] Section 14(4) of the Act provides, "[t]he grounds upon which any complaint against a judge may be lodged, are any one or more of the following:

For present purposes, the relevant ground is section 14(4)(*b*), which concerns a wilful or grossly negligent breach of the Code. Section 14(4)(*e*), which concerns other wilful or grossly negligent conduct incompatible with or unbecoming the holding of judicial office, is also relevant.

[11] Article 2(3) of the Code provides that any wilful or grossly negligent breach of the Code is a ground upon which a complaint against a Judge may be lodged in terms of section 14(4)(*b*) of the Act. The statutory threshold is therefore not ordinary error or ordinary negligence. The conduct must be wilful or grossly negligent before a complaint is established under section 17(4)(*b*).[5]

[12] Article 10 of the Code requires a Judge to perform all assigned judicial duties diligently,[6] to dispose of the business of the court promptly and in an efficient and businesslike manner,[7] and to give judgment or any ruling in a case promptly and

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(a) Incapacity giving rise to a judge's inability to perform the functions of judicial office in accordance with prevailing standards, or gross incompetence, or gross misconduct, as envisaged in section 177 (1) (a) of the Constitution;
(b) Any wilful or grossly negligent breach of the Code of Judicial Conduct referred to in section 12, including any failure to comply with any regulation referred to in section 13 (5);
(c) Accepting, holding or performing any office of profit or receiving any fees, emoluments or remuneration or allowances in contravention of section 11;
(d) Any wilful or grossly negligent failure to comply with any remedial step, contemplated in section 17 (8), imposed in terms of this Act; and
(e) Any other wilful or grossly negligent conduct, other than conduct contemplated in paragraph (a) to (d), that is incompatible with or unbecoming the holding of judicial office, including any conduct that is prejudicial to the independence, impartiality, dignity, accessibility, efficiency or effectiveness of the courts."

[5] Section 17(4) of the Act provides, "[i]f, pursuant to the steps referred to in subsection (3), the Chairperson or member concerned is satisfied that there is no reasonable likelihood that a formal hearing on the matter will contribute to determining the merits of the complaint, he or she must, on the strength of the information obtained by him or her in terms of subsection (3)—
(a) dismiss the complaint;
(b) find that the complaint has been established and that the respondent has behaved in a manner which is unbecoming of a judge, and impose any of the remedial steps referred to in subsection (8) on the respondent; or
(c) recommend to the Committee, to recommend to the Commission that the complaint should be investigated by a Tribunal."

[6] Article 10(1)(*a*).

[7] Article 10(1)(*c*).

without undue delay.[8] Note 10(ii) records that litigants are entitled to judgment as soon as reasonably possible.

[13] The importance of timely judgment has been recognised in the case law. In *Exdev (Pty) Ltd and Another v Pekudei Investments (Pty) Ltd*,[9] the Supreme Court of Appeal stated that,

> "[j]udges are employed to give judgments. They owe it not only to the litigants who appear before them but to the public at large to do so expeditiously, and the administration of justice will fall into disrepute if they fail in that regard."[10]

[14] I associate myself with the sentiment expressed by the SCA but must state that judges are not "employed", as the passage suggests, but are "appointed". At the same time, the JCC does not sit as a court of appeal. Any complaint directed at the correctness of the respondent's judgment, including her findings on urgency, jurisdiction, *res judicata* and costs, must be distinguished from the separate disciplinary question whether the respondent failed to perform her judicial duties promptly and without undue delay.

**Evaluation**

[15] The judgment in the underlying matter confirms that the application was brought as an urgent application under Rule 6(12). It also confirms that the applicants sought extensive relief, including payment-related relief against the Road Accident Fund and relief connected to the pending application to have the first

[8] Article 10(1)(*d*).
[9] [2010] ZASCA 170; 2011 (2) SA 282 (SCA).
[10] Id at para 25.

applicant struck off the roll of legal practitioners. The judgment further records that the application was opposed only by the Road Accident Fund.

[16] The judgment also shows that the respondent did not merely dispose of the matter on urgency alone. She considered condonation for the late filing of the Road Accident Fund's answering affidavit, as well as the issues of urgency, jurisdiction, *res judicata* and costs. The judgment ultimately dismissed the application, held that it lacked urgency, lacked jurisdiction and was *res judicata*, and ordered the first and second applicants to pay the Road Accident Fund's costs on the attorney and client scale.

[17] It is not necessary, and would not be appropriate in this ruling, to decide whether the respondent was correct to dismiss the urgent application or to grant a punitive costs order. Those are matters for the ordinary appeal or review processes. The disciplinary complaint must be confined to the delay in delivering judgment and whether that delay constituted misconduct under the Act and the Code.

[18] On the material before me, the delay was inordinate. The matter was before the respondent in late September 2023 and judgment was delivered electronically only on 11 December 2024. The delay was therefore more than fourteen months. Even accepting that the judgment dealt with more than urgency and required consideration of jurisdiction, *res judicata* and costs, a delay of more than fourteen months in an urgent application is a serious departure from the standard required by Article 10 of the Code.

[19] The urgency of the underlying application is relevant. The respondent ultimately found that the application was not urgent. But the fact that a matter is

found not to be urgent does not make delay immaterial. A litigant who approaches the urgent court is entitled to know, within a reasonable time, whether urgent relief has been refused so that further procedural steps may be considered. The complainant's central grievance is that the delay prevented him from doing so timeously.

[20] The absence of a response from the respondent is also material. The respondent was specifically invited to respond to the complaint and was later given a final extension. She did not provide any explanation for the delay. There is therefore no information before me showing that the delay was caused by complexity, administrative difficulty, a personal issue, workload, problems with the record, or any other circumstance that might explain or mitigate the delay.

[21] I do not find, on the present record, that the respondent acted wilfully, deliberately sought to prejudice the complainant, or acted from bad faith or improper motive. The misconduct established is the inordinate and unexplained delay in delivering judgment in the matter. That misconduct is serious, but it can appropriately be addressed through the remedial steps available under section 17(8) of the Act. I am therefore not satisfied that the complaint warrants a recommendation for investigation by a Tribunal.

[22] That conclusion does not minimise the seriousness of the delay. Article 10 imposes a clear obligation on a Judge to give judgment or any ruling promptly and without undue delay. A delay of more than fourteen months in delivering judgment, in circumstances where no explanation has been provided despite the respondent having been afforded an opportunity to respond, constitutes a grossly negligent breach of Article 10 of the Code.

[23] The complaint is therefore established to the extent that the respondent's delay in delivering judgment constituted a grossly negligent breach of Article 10 of the Code and conduct unbecoming of a Judge in terms of section 17(4)(*b*) of the Act.

**Remedy**

[24] The remedy must be proportionate to the misconduct established. The delay was serious. It concerned an urgent application; it endured for more than fourteen months; and it remains unexplained because the respondent did not file submissions despite being afforded an opportunity and a final extension to do so.

[25] A formal reprimand is therefore appropriate. It marks the seriousness of the breach of Article 10 and reinforces the obligation on Judges to deliver judgments and rulings promptly and without undue delay.

[26] A written apology is also appropriate. Although the complaint records that the complainant received an email from the respondent's secretary stating that the Judge apologised for the inordinate delay, the circumstances warrant a formal written apology directed to the complainant in terms of section 17(8)(*a*) of the Act.

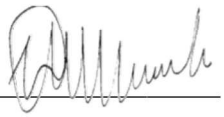
**Ruling**

[27] The complaint is established to the extent that the respondent delayed for more than fourteen months in delivering judgment under case number 16452/23. The delay constituted a grossly negligent breach of Article 10 of the Code of Judicial

Conduct and conduct unbecoming of a Judge in terms of section 17(4)(*b*) of the Judicial Service Commission Act 9 of 1994.

[28] In terms of section 17(8)(*b*) of the Act, the respondent is formally reprimanded.

[29] In terms of section 17(8)(*a*) of the Act, the respondent is directed to tender a written apology to the complainant within 30 days of receipt of this ruling.



**THE JUDICIAL CONDUCT COMMITTEE**